IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND SEVEN

PRESENT

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.21016 OF 2004

Between:

Associated Cement Companies Limited,
Mancherial Cement Works, Mancherial,
Adilabad District, represented by its
Ag. Vice-President Sri Sunil Tiwary.

.... PETITIONER

AND

Government of Andhra Pradesh,
Labour, Employment, Training and
Factories (IMS) Department, rep. by
its Principal Secretary,
Secretariat Buildings, Hyderabad,
And another.

....RESPONDENTS

THE HON'BLE SRI JUSTICE
C.Y.SOMAYAJULU

WRIT PETITION NO.21016 OF 2004

O R D E R

This writ petition is filed seeking a writ in the nature of Mandamus to declare that G.O.Rt.No.1696, LET & F (IMS) Department, Dated 16.09.2004 issued by the first respondent, as illegal, arbitrary and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India and to direct the first respondent to grant exemption to the petitioner company under Sections 87, 88, 91 and 91(A) of the Employees State Insurance Act, 1948 (for short 'the Act') for the period from 01.04.1999 onwards.

2. The averments, in brief, in the affidavit of the Deputy Manager (HRD) of the petitioner company, filed in support of the application, are that the petitioner company, which is registered under the provisions of the Indian Companies Act, has cement manufacturing plants all over India including Mancherial of Adilabad District, which is known as Mancherial Cement Works, in which about 200 workmen are engaged and that it is complying with all the statutory obligations and providing all facilities required to the employees as per the laws in force. It constructed a township for the benefit of employees and their families, and also established a full-fledged dispensary and appointed full time

doctors as well as para-medical staff like Nurses, Compounders etc., to take care of the medical needs of its employees round the clock and is rendering medical assistance to all its employees. So, by invoking Sections 87, 88, 91 and 91-A of the Act it sought exemption from the coverage of the provisions of the Act from 1979 to 1993 and first respondent exempted its Mancherial Unit from the provisions of the Act till 1993. Though it submitted an application for exemption for the subsequent years, for reasons best known to the respondents, they, without giving any opportunity to it, forwarded a letter dated 07.10.1997 to it, intimating that as it was not exempted from the operation of the provisions of the Act from 31.02.1993. It has to submit returns and registers of employees with effect from 01.04.1997 onwards and also demanded contribution upto 31.03.1997. As information relating to non-granting of the exemption beyond 31.03.1993 was also communicated to its Employees Union formed by its employees the Union of its employees filed Writ Petition No.35291 of 1997, in which the Court granted ad interim stay in WPMP No.41527 of 1997 on 01.01.1998. Later the writ petition was disposed of on 07.04.2000 with a direction to the Union to make a representation to the ESI Court within a period of two months from the date of receipt of the order and directed the ESI Court to dispose of the matter on merits in accordance with law within a period of four months from the date of submission of the representation by the employees union, with an observation

“it is needless to mention that pending disposal of the case before the ESI Court, no coercive steps shall be taken by the ESI Corporation against third respondent” (petitioner herein). From 01.04.1993 till 2000 its employees have been availing the medical facilities provided by it. By the date of disposal of W.P.No.35291 of 1997 as its mining lease was not renewed by the Government of Andhra Pradesh, its Unit at

Mancherial became
un-operational, and so, it was constrained to lay off the workmen, and so, the workers Union, which filed the above writ petition did not take steps to comply with the orders of the Court by making a representation to the ESI Court. In the circumstances it submitted a representation dated 02.02.1999 to the first respondent with a copy to the second respondent, seeking exemption from the provisions of the Act for the period from 01.04.1999 to 31.03.2000. Respondents who kept quite for five years without passing any orders on its representation issued G.O.Rt.No.1696, LET & F (IMS) Department, dated 16.09.2004 rejecting the request of the petitioner for grant of exemption under the Act from 01.04.1999 to 31.03.2000 and directed it to comply with the provisions of the Act. Hence, the writ petition.

3. On behalf of the respondents, the Deputy Director of the second respondent filed his counter-affidavit inter alia alleging that the medical benefits being provided by the petitioner to its employees are not comparable to the benefits that are being made available to the employees under the provisions of the Act, as Super Specialty facilities are being made available to the employees covered by the Act by referring them to corporate hospitals like Appollo, Medicity, CDR, Kamineni, NIMS etc., The ESI Dispensary at Mancherial is manned by qualified Doctors and para-medical staff. Petitioner's Unit was being exempted from March, 1979 to March, 1993 periodically, but was not exempted for ever. Request of the petitioner for exemption was rejected by the first respondent only after considering the report of the second respondent and the recommendation of the Standing Committee. Since the petitioner itself was responsible for the situation in which it is now placed, and as it failed to obtain the declaration

forms from the employees as required under Section 2-A of the Act read with Regulation 10-B, petitioner has to pay the contributions payable under the Act in view of Section-39 of the Act. Neither the Union of employees nor the employees of the petitioner complied with the directions issued in W.P.No.35201 of 1997. Therefore, the provisions of the Act automatically apply to the unit of the petitioner. So the petitioner who failed to move for five long years in taking steps for obtaining objections, cannot blame anybody, and so, it is not entitled to any relief.

4. At the time of hearing, the learned counsel for the respondents took a preliminary objection regarding the maintainability of the writ petition without taking recourse to the effective alternative remedy available by relying on ***M/s.ZUARY CEMENT V/s. THE STATE OF ANDHRA PRADESH*** (W.P.No.20626 of 1999 and batch, dated 11.10.2001) and ***M/s.ASHOK LEYLAND LIMITED V/s. THE DEPUTY TAHSILDAR*** (W.P.No.2120 of 1991 and batch, dated 20.04.2001) rendered by a Division Bench of this Court.

5. The contention of the learned counsel for the petitioner is that the decisions relied on by the learned counsel for respondents have no application to the facts of this case, because in this case petitioner is questioning the action of the first respondent in not affording an opportunity of being heard to the petitioner before rejecting its request for exemption. Relying on ***EMPLOYEES' STATE INSURANCE CORPORATION V/s. JARDINE HENDERSON STAFF ASSOCIATION***[1] and ***ESI CORPORATION V/s. C.C.SANTHAKUMAR***[2] she contended that inasmuch as the first respondent did not assign any reason for rejecting the exemption sought by the petitioner and passed a non-speaking order, the order

impugned is liable to be set aside. It is her contention that the first respondent ought to have taken into consideration the medical facilities being provided by the petitioner to its employees, before it thought it fit to reject the exemption sought by the petitioner and contended that the second respondent is having only a small dispensary at Mancherial without any basic amenities and equipment in that dispensary, and as the patients would be referred to corporate hospitals at Hyderabad, it is clear that the workmen have to go all the way to Hyderabad for treatment, whereas the petitioner established a full fledged hospital with all medical facilities, with two permanent qualified doctors and four para-medical staff available round the clock, and contended that when the employees of the petitioner unit have no grievance and had objected to the respondents not granting the exemption sought, first respondent ought not to have rejected the application after a long lapse of time, that too without affording an opportunity of being heard to the petitioner and contended that in the circumstances second respondent ought not to have issued the demand notice with retrospective effect when the representation of the petitioner was pending from 1999 and since the period for which the exemption was sought expired by 31.03.2000, it should be deemed that the exemption was granted. It is also her contention that inasmuch as the units of the petitioner at Karnataka and Chattisgadh were granted exemption from operation of the provisions of the Act in view of the medical facilities being made available by the petitioner in the cement plants established by it in those States the same facilities may be extended to the petitioner in this State also.

6. The contention of the learned Standing Counsel for second respondent is that inasmuch as the question whether the petitioner is

rendering better medical facilities than the medical facilities that are being provided by the second respondent is a question of fact, which cannot be decided in a writ petition, and so, the petitioner who had an opportunity to approach the ESI Court, in pursuance of the directions given in the writ petition filed by its employer union, had not approached the ESI Court and as the employees union of the petitioner had also not approached the ESI Court in spite of the directions given in the writ petition filed by it, and as the petitioner, admittedly, did not file any application seeking exemption from 1993 to 1999, the provisions of the Act automatically apply, rendering the petitioner liable to make contributions, and as it admittedly failed to make the contribution, proceedings for recovery of the dues from the petitioner were already issued, and so, this petition is not maintainable, and as per the ratio in ***M/s. EMPLOYEES' STATE INSURANCE CORPORATION V/s. M/s.F.FIBRE BANGALORE (P) LIMITED***[3], petitioner has to approach the ESI Court and seek adjudication.

7. Though it is aware of the fact that it has to file application seeking exemption from the provisions of the Act every year, petitioner, admittedly did not file any application for exemption from the year 01.04.1994 onwards. Application seeking exemption from 01.04.1993 to 31.03.1994, filed by the petitioner, was rejected by the order impugned in this writ petition. When no order exempting the petitioner from the provisions of the Act was passed, petitioner has to comply with the provisions of the Act. Assuming that the petitioner had a valid reason for not complying with the provisions of the Act for the year 1993-94, inasmuch as orders on the application made by it to the first respondent seeking exemption from the provisions of the Act for that

year were not passed with in a reasonable time, nothing prevented the petitioner from complying with the provisions of the Act for the subsequent years. When it is not even the case of the petitioner that it made an application for exemption for any of the years subsequent thereto, petitioner cannot be heard to say that the respondent Corporation has no right to demand the amounts due under the Act for the subsequent periods.

8. Question as to what is the contribution payable and whether the facilities offered by the petitioner are better than the facilities offered by the second respondent, are questions of fact and cannot be decided in this writ petition.

9. In para 55 of ***JARDINE HENDERSON STAFF ASSOCIATION'***s case (1 supra), it is observed as follows

> "… If the High Court had not passed the order of injunction, the respondent companies would have contributed the ESI contribution instead of spending monies on the medical facilities and allowances. In these circumstances, the submissions made by the learned Senior Counsel appearing for the respondents that it would be unfair and unjust to make the employer pay contribution towards ESIC since in lieu of the contribution to ESIC, the employer provided better medical facilities, in our view holds water and it would cause extreme and grave hardship to the employers if they are required to pay contributi9on for the past several years for no fault of their own. …"

There is nothing on record in this case to show how many workmen of the petitioner were treated during the year 1999-2000 and the amount spent by the petitioner for the treatment of those workmen. For the subsequent years, as the petitioner did not file applications seeking exemption from the operation of the provisions of the Act, petitioner has a duty to comply with the provisions of the Act.

10. It is not the case of the petitioner that whenever it made an application for exemption Government passed the orders granting exemption only after affording an opportunity of being heard to it. Assuming that the petitioner had reason to believe that inasmuch as it applied for exemption for the years 1993-94, it need not comply with the provisions of the Act for that year, petitioner who did not even file applications seeking exemption for the subsequent periods i.e., from 01.04.1994 onwards, *prima facie* has no grounds or reasons for not complying with the provisions of the Act. If the petitioner has any grievance about the demand made by the second respondent, it has to approach the ESI Court. Without doing so, it approached this Court directly, and so, I find no merit in this petition.

11. Hence, the petition is dismissed. No costs.

JUSTICE C.Y.SOMAYAJULU

14th DECEMBER, 2007

PGS

THE HONOURABLE SRI JUSTICE
C.Y.SOMAYAJULU

W.P.NO.21016 OF 2004

14th DECEMBER, 2007

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[1] (2006) 6 SCC 581

[2] (2007) 1 SCC 584

[3] (1996(8) SUPREME 743